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January 26, 1993

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Ms. Donna Searcy
Secretary
Federal Communications Commission
1919 M St., NW
Washington, DC 20554

Re: In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 - Rate Regulation

MM Docket No. 92-266

Dear Ms. Searcy:

On behalf of the Greater Grand Rapids Area Cable Commission and the Cities of New Ulm, Minnesota and Savage, Minnesota, please find enclosed for filing in the above-referenced docket an original and nine copies of **Initial Comments.**

Please feel free to contact me if you have any questions.

Very truly yours,

Susan Rester Miles

Susan Rester Miles

cc: Greater Grand Rapids Area Cable Commission
City of New Ulm
City of Savage

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List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION FCC 92-544
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket 92-266
	)	
Rate Regulation	)	

INITIAL COMMENTS OF GREATER GRAND RAPIDS AREA CABLE COMMISSION AND CITIES OF NEW ULM, MINNESOTA, AND SAVAGE, MINNESOTA

January 26, 1993

Submitted by:
Hessian, McKasy & Soderberg, P.A.
Susan Rester Miles
4700 IDS Center
Minneapolis, MN 55402
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I. INTRODUCTION

A. Summary of Comments

These initial comments are submitted by the Greater Grand Rapids Area Cable Commission and the Cities of New Ulm, Minnesota, and Savage, Minnesota (collectively hereinafter "Minnesota Cities"), in response to the Notice of Proposed Rulemaking ("NPRM") in Docket MM 92-266, adopted by the Federal Communications Commission (the "Commission") on December 10, 1992, and released on December 24, 1992. These comments are intended to address the major components of basic service rate regulation discussed in the NPRM. The Minnesota Cities further intend to submit reply comments which will address additional accounting issues under basic service rate regulation as well as the FCC's regulation of cable programming services.

In these comments, the Minnesota Cities state that it was Congress' intent that any rules promulgated by the Commission under the 1992 Cable Consumer Protection and Competition Act ("the '92 Cable Act") should produce rates for basic service which are generally lower than those rates which were in effect when that legislation was enacted. The Minnesota Cities further state that Congress intended that local franchising authorities and the FCC would be allowed to reduce rates which were found to be unreasonable. The Minnesota Cities further comment that effective competition should not be considered to exist if subscribers to the competing service are required to purchase high-priced hardware before they can receive the programming. In addition, programming

which is a complement to, and not competitive with the cable operator's programming should not be considered comparable video programming.

Next, the Minnesota Cities state that the holding of *American Civil Liberties Union v. Federal Communications Commission*, 823 F.2d 1554 (D.C.Cir. 1987), confirms that local franchising authorities may regulate any tier of service which includes retransmission of local broadcast signals and access channels. In further comment, the Minnesota Cities disagree that local franchising authorities should be required to certify an absence of effective competition in their franchise areas. Instead, a cable operator which objects to a local franchising authority's exercise of jurisdiction based on an alleged absence of effective competition should petition the FCC for a revocation of certification.

As for the regulation of rates charged for the basic service tier, the Minnesota Cities agree that a primary goal should be the reduction of unnecessary administrative burdens. However, the Minnesota Cities disagree that the benchmarking approaches proposed by the FCC provide enough accuracy to warrant serious consideration. Instead, the Minnesota Cities support the adoption of a formula to be applied to the individual costs of a given system based on the direct costs of signals plus a nominal contribution to joint and common costs. Further, the Minnesota Cities strongly urge the FCC to clarify that local franchising

authorities have jurisdiction to regulate the rates of any equipment used to provide basic service.

Franchising authorities should be given 180 days from the time rate schedules are filed in which to initially review existing rates. Any proposed rate increases for basic services may be acted upon by the franchising authority within 120 days after it notifies the cable operator that a proposed rate increase has been accepted for filing. Proposed increases of 5 percent or less may be allowed to take effect subject to refund. Increases of greater than 5 percent may be suspended or may take effect in whole or in part subject to refund, at the discretion of the franchising authority.

Evasion of the rate regulation portions of the 1992 Cable Act through retiering is a significant problem which must be addressed. In response, a rebuttable presumption should be created that any change in per-channel costs of greater than 10 percent between the date of enactment of the 1992 Cable Act and the effective date of the rate regulation rules constitutes an evasion of the rate regulation rules.

B. The Commenters

Greater Grand Rapids Area Cable Commission

The Greater Grand Rapids Area Cable Commission is a joint powers cable commission comprised of the City of Grand Rapids, Grand Rapids Township, Harris Township, City of Bassbrook, and City of La Prairie, all located in the State of Minnesota. These cities and townships, which are approximately 175 miles due north of Minneapolis-St. Paul and include 4386 subscribers, are served by

Northland CableVision. Northland is owned by a limited partnership affiliated with InterMedia Cable Partners based in San Francisco, California. The InterMedia group acquired the system in June, 1992 for a price of approximately $1828 per subscriber. Northland presently employs a single tier of service consisting of 32 activated channels, including 8 broadcast channels and 3 public access channels, but has announced plans to retier its services effective April 1, 1993. The present monthly rate, $19.95 ($0.623 per channel), will increase in February, 1993 to $20.95 ($0.654 per channel). Northland's rates have been increasing steadily since January, 1987, when they were $11.00 per month.

City of New Ulm, Minnesota

New Ulm is located approximately 90 miles southwest of Minneapolis/St. Paul, Minnesota, in a rural area which receives over-the-air television broadcast stations almost exclusively from a television translator service which is funded by voluntary contributions. The City is served by Amzak Cable Company, based in Los Angeles, California. As of January 1993, Amzak served 5043 subscribers out of 5465 homes passed, for a penetration rate of 92.3 percent.

Amzak currently employs two tiers of service in its New Ulm system. The basic tier includes 12 channels including 6 broadcast channels, 5 of which originate from the Minneapolis-St. Paul area and the other from Mankato, Minnesota. The basic tier also includes an access channel, a weather channel, a shopping channel, the Learning Channel, C-Span, and ESPN. The monthly charge for the

basic tier is $13.40 ($1.12 per channel), exclusive of sales and franchise taxes. The enhanced tier offers 23 additional channels of programming for $6.10, for a total of $19.50 ($ 0.56 per channel). A total of 1042 customers, or 21 percent of the system's 5043 customers subscribe to Tier 1.

City of Savage, Minnesota

Savage, which is located approximately 15 miles southwest of Minneapolis, is served by Midwest CableVision, another InterMedia Cable Partners affiliate. InterMedia acquired the system in June, 1992, paying approximately $1828 per subscriber. Midwest presently services its approximately 2500 Savage subscribers under a single tier consisting of 43 activated channels. The monthly charge for this service is $22. Although Midwest has not announced any specific plans for retiering, it has indicated a future intent to do so

II. GENERAL ISSUES RELATING TO CONGRESSIONAL INTENT

The Commission inquires at ¶ 4 of the NPRM, "whether the purpose and the terms of the Cable Act embody a congressional intent that our rules produce rates generally lower than when the Cable Act of 1992 was enacted . . . or, rather a congressional intent that regulatory standards serve primarily as a check on prospective rate increases."

The fact that Congress intended that the Commission and franchising authorities be allowed to exercise jurisdiction over existing rates can be readily determined from the first finding of the '92 Cable Act, which provides:

> Pursuant to the Cable Communications Policy Act of 1984, rates for cable television services have been deregulated in approximately 97 percent of all franchises since December 29, 1986. Since rate deregulation, monthly rates for the lowest priced basic cable service have increased by 40 percent or more for 28 percent of cable television subscribers. Although the average number of basic channels has increased from about 24 to 30 **average monthly rates have increased by 29 percent** during the same period. **The average monthly cable rate has increased almost 3 times as much as the Consumer Price Index since rate deregulation.** (emphasis supplied)

P.L. 102-385, § 2(a)(1). Moreover, the Act specifically directs the Commission to promulgate regulations regarding:

> . . . the procedures to be used to **reduce** rates for cable programming services that are determined by the Commission to be unreasonable and to refund such portion of the rates or charges that were paid by subscribers after the filing of such complaint and that are determined to be unreasonable. (emphasis supplied)

47 U.S.C. § 543 (c)(3).

Further, the legislative history of the '92 Cable Act leads to the inescapable conclusion that constituent experiences with **past rate increases** were of paramount concern, and that Congress desired to remedy this situation by permitting reductions of **current** rates:

> It is clear from these statements and from other evidence gathered by the Committee that (1) for the past several years the average rate across the country has increased several times greater than the rate of inflation, and (2) rates in certain locations have increased dramatically, such that subscribers are being gouged by cable operators.

Sen.R. No. 102-92, p. 7 (1993).[1]

In 1992, the Commission amended its definition of effective competition to broaden the scope of possible rate regulation, but the Senate found the new standard to be deficient:

> The Committee does not believe that the FCC's recent decision will afford adequate protection to consumers. According to comments filed by the National Telecommunications and Information Administration (NTIA), this will subject systems serving 18 percent of cable subscribers to rate regulation by local authorities. The National Cable Television Association (NCTA) contends that systems serving 34 percent of the cable subscribers would be subject to rate regulation under this standard. In sum, according to either NTIA or NCTA, only a small percent of the cabled homes would have the protection of rate regulation.

Sen. R. No. 102-92, p. 8. Through the '92 Cable Act, Congress has replaced the Commission's discretion with a statutory definition of effective competition. In taking this step, Congress intended to provide immediate relief to cable subscribers who had suffered long enough from overcharging which occurred under the Commission's prior rules.

Had Congress intended to limit rate regulation of basic service only to **future increases**, it could have so expressly provided. To the contrary, it provided for an effective date for the rate regulation section of 180 days after the date of enactment, without restriction or qualification.

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[1] It is recognized that if there are increased costs experienced by the cable operator as a result of retransmission consent, that such costs will in part offset rate reductions which otherwise would have occurred due to the elimination of monopoly profits. *47 U.S.C. sec. 623 (b)(2),(7).*

The Commission also asks at ¶ 4 of the NPRM the extent to which rate reductions should be accomplished in the basic service tier and/or for cable programming services. The question implies an underlying assumption that if one tier, say for example basic, is reduced significantly, then cable programming services would be reduced by some lesser amount. The Minnesota Cities believe this assumption to be incorrect. Specifically, Congress did not mandate that reductions in one class of service be predicated one way or another by reductions in another class of service.

It is important to note that basic service has generally been priced in a manner which discourages the subscriber from selecting the lower tier. For example, on the New Ulm system the 12-channel basic tier is priced at $13.40 per month, or $1.12 per channel, while two combined tiers of 35 channels may be purchased for an aggregate per channel cost of $0.56. It would defeat the purpose of the Cable Act to shift monopolistic profits from one tier to another by applying less scrutiny to the regulation of cable programming services than to the basic service tier.

The Commission further inquires about (¶ 4) the impact of rate reductions on the cable operators' ability to provide service to subscribers on the basic or higher level service tiers. It is doubtful that there would be an impact on operators' ability to maintain the systems and plant that are presently in place. More importantly, this appears to be the sort of threshold question which Congress addressed when it considered enactment of a rate regulation provision. In setting forth the statutory criteria to

be used in establishing regulations to ensure reasonable rates, maintenance of service levels was not among the enumerated criteria. Therefore, consideration of this element as a part of this rulemaking appears to be beyond the scope of the FCC's authority.

III. EFFECTIVE COMPETITION

The Minnesota Cities offer comments on the definition of effective competition set forth in 47 U.S.C. § 543 (l)(1)(B).[2]

A. What is an Offering

In ¶ 8 of the NPRM, the Commission solicits comments on whether an "offering" of service to a household means that service is actually available to such household.

The word "offer" should be construed in its strictest sense in order to avoid counting households where the competing service is not reasonably available. For example, with respect to video services involving technologies which require the purchase of additional hardware, such as a satellite dish or antenna, such services may not be reasonably available to subscribers due to the substantial cost of the hardware. The Minnesota Cities propose that if the installed cost of such necessary additional hardware

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[2] (1) The term "effective competition" means that --
(B) the franchise area is --
(i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and
(ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area. . .

exceeds 50 percent of the average cost of a new color television monitor, then the service employing that technology shall not be considered as having been "offered." For example, should direct broadcast satellite service (DBS) ever become a reality, yet dishes required to receive the signal retail for $1000, then DBS should not be deemed to have been "offered" since it would not be reasonably available to most households.

Similarly, wireless technologies such as MMDS (multichannel multipoint distribution service) should not be considered as having been "offered" to subscribers who are unable to receive the signal due to interference with lines of sight.

B. What is a "Multichannel Video Programming Distributor"

The question is asked at ¶ 9 of the NPRM "whether a telephone company offering of 'video dialtone' . . . service or a television broadcast station offering multiplexed multichannel service would qualify as a "multichannel video programming distributor" so as to be included in the definition of that term which has been codified at 47 U.S.C. § 531 (12). The Minnesota Cities submit that the question is premature.

At this point in time, no construction permits have been granted for video dialtone services on anything other than an experimental basis. Similarly, there is no reason to believe that multiplexed multichannel offerings by television broadcasters are close at hand. Information about these services will be produced and analyzed during Commission licensing proceedings. It would be more appropriate for the Commission to propose rules embracing

these technologies after this information becomes available. Alternatively, as the Commission considers applications for individual licenses or permits for video dialtone and multiplexed television offerings, it may also consider whether the proposed service amounts to multichannel video programming.

C. Minimum Amount of Programming and Comparable Video Programming

Paragraph 9 of the NPRM asks whether a minimum amount of programming or minimum number of separate channels must be offered by the competitor to be considered a multichannel video programming distributor. This question is intrinsically intertwined with the concept of comparability in video programming.

As a general principle, the programming offered by the alternate service must compete with, and not simply be a complement to, the cable operator's programming. For example, if the alternate service does not substantially duplicate the cable service, then it is reasonable to expect that the customer may subscribe to **both** services. True competition implies that the consumer is likely to select one or the other service, such as selecting between similar airline carriers for a trip between major cities. In other words, to be competitive the alternate programmer must offer the same type, mix, and quality of programming as the cable operator.

Moreover, the alternate programmer must offer more than just a handful of channels in order to qualify as being a "multichannel" provider of "comparable" video programming. This will be

particularly true because cable operators will soon use compression to offer hundreds of channels.

For example, some rural electric cooperatives offer a television translator service from about ten miles away from New Ulm. Nine broadcast stations are retransmitted over-the-air, most of which are duplicated on the cable system serving New Ulm. It cannot be seriously contended that this nine channel service is comparable to the 35 channel cable service. Indeed, it appears that New Ulm's cable penetration has not been affected by the translator service, since the penetration rate for cable exceeds 90 percent.

To suggest that a competitor which offers 5 channels is comparable to a cable operator offering 105 channels would be like saying that a commuter airline providing service between Grand Rapids, Minnesota and the Twin Cities competes with carriers providing service between the Twin Cities and Washington, D.C.

As a guideline for determining comparability of service, one approach would be to require that the alternate programmer offer a minimum percentage of channels offered by the cable operator, such as 75 percent.

IV. COMPONENTS OF BASIC TIER

A. Which Channels Must be Included

The Commission asks in ¶ 11 of the NPRM for comments on how the exercise of retransmission consent rights might affect the composition of the basic service tier. In general, the Minnesota Cities agree that retransmission consent stations carried by the

operator fall within the scope of 47 U.S.C. § 543 (b)(7)(A)(iii) and should be included in basic service ("any signal of any television broadcast station that is provided by the cable operator to any subscriber. . .").

B. Basic Service is not Limited to a Single Tier

It is suggested in ¶ 13 of the NPRM that Congress intended to amend the definition of basic cable service found in Section 602 (2) of the Communications Act ("**any** service tier which includes the retransmission of local television broadcast signals") so that only the **lowest** tier of service including broadcast signals would now be considered as basic service. The Minnesota Cities strenuously object to this interpretation.

The U.S. Court of Appeals for the District of Columbia held in *American Civil Liberties Union v. FCC,* 823 F.2d 1554 (D.C.Cir. 1987) that the definition of basic cable service found in Section 602 (2) of the Communications Act could not be altered by Commission regulations. There the Commission had attempted to restrict the definition of basic service by rule to include only the **lowest** tier incorporating retransmitted local broadcast signals. The court soundly rejected this tactic. Now the Commission is once again trying to do that which the court forbade it from doing. Nothing has been changed by the '92 Cable Act that would affect that holding.

The courts have long held that when interpreting legislation, statutory phrases are not construed in isolation. Generally, when the same words are used in different sections of the law, they will

be given the same meaning. *Barnson v. U.S.*, 816 F.2d 549 (10th Cir. 1987).

The Commission implies that the new Section 623 (b)(7) which lists the minimum contents of the basic tier subject to rate regulation in some way modifies or supercedes the Section 602 definition of basic service. That inference is incorrect. Section 602 (2) sets forth the general definition of basic cable service as **any** tier incorporating retransmitted local broadcast signals, while Section 623 (b)(7) merely specifies that the **minimum contents** of such a tier must include **certain types** of retransmitted broadcast signals.

If a cable operator engages in the cumulative marketing of tiers as described in n. 31 of *ACLU*, any higher tiers which include retransmitted broadcast signals should be considered to be basic service. In fact, Congress specifically provided that cable operators may want use cumulative marketing of tiers by stating in section 623 (b)(7)(B) that a cable operator may place additional programming or services on the basic tier.

Equally important, the *ACLU* decision was issued over five years prior to the enactment of the '92 Cable Act. If Congress had intended to change the applicability of that decision to the '92 Cable Act rate regulation provisions, it had ample opportunity to so provide. It did not, and so the decision stands.

V. CERTIFICATION PROCEDURE

A. Jurisdictional Division

The Minnesota Cities agree with the Commission's position stated in ¶ 15 of the NPRM that if there has been no disapproval or revocation of an application for certification, the Commission lacks the authority to initiate regulation of rates for basic cable service. Sections 623 (a)(2)(A) and (a)(6) provide that the Commission shall regulate rates for basic cable service in the absence of competition if it disapproves a franchising authority's certification or revokes such authority's jurisdiction. That does not mean, however, that the Commission should not be able to exercise such rate regulation jurisdiction upon receipt of a petition from a franchising authority requesting the Commission's assistance.

Not all franchising authorities will be able to fulfill the certification requirements of section 623 (a)(3). If the franchising authorities are aware that they do not qualify but believe their constituents need relief from monopolistic rates, it is reasonable to give them the option of requesting the Commission to exercise its jurisdiction. Otherwise, the only available option will be for the franchising authority to file an application for certification with the expectation that it will be disapproved or rejected. The purpose of filing such an application would simply be to trigger Commission jurisdiction pursuant to section 642 (a)(6).

Franchising authorities must have the option of making such requests if the certification process is to be meaningful. Consequently, the Minnesota Cities disagree with the suggestion in

n. 32 and in ¶ 16 of the NPRM that allowing a franchising authority to request the Commission to exercise jurisdiction is somehow inconsistent with the jurisdictional framework of the Cable Act.

B. Finding of Effective Competition

The Commission proposes at ¶ 17 of the NPRM to place the burden on local franchising authorities to certify in their applications under Section 623 (b)(3) that there is an absence of effective competition in the franchise area, and to submit supporting documentation. The stated rationale for this approach is that it would be an administrative burden for the Commission to analyze every franchise area in the country for the existence of effective competition. The Minnesota Cities object to this proposal.

The existence or absence of effective competition is a threshold jurisdictional question. Thus, it must be assumed that any franchising authority filing an application has made a reasonable effort, based on available information, to determine that there is an absence of effective competition.

It cannot be assumed, however, that franchising authorities will automatically have access to the information needed to determine the existence or absence of effective competition. Many competitive technologies, such as MMDS and DBS, probably will not require substantial use of public rights of way and therefore will not be subject to franchise requirements. Information sought regarding the number of homes and subscribers reached will be closely guarded by competitors. It is even foreseeable that such

information will be protected under uniform state trade secret laws.

In contrast to the local authorities, the Commission will have jurisdiction over the competing technologies through licensing and permitting proceedings. Data collected in Commission licensing proceedings is available to Commission staff and can be used by them to determine whether the effective competition standards have been met. Alternatively, the Commission could require alternate technology providers to file annual reports providing the data necessary to determine whether effective competition exists.

Ultimately, for several reasons the burden of proof regarding the existence of effective competition must lie with the cable operator. First, Congress has expressly provided that the Commission shall seek to reduce administrative burdens on subscribers, cable operators, **franchising authorities**, and the Commission. *47 U.S.C. § 543 (b)(2)(A).* Imposing a requirement that franchising authorities generate or collect data which is not readily available to them but which may be readily available to others is not consistent with this mandate. Second, the Commission proposes to have franchising authorities prove a negative, *i.e.*, the **absence** of effective competition. As a point of procedure, this is at odds with accepted methods of proving facts. It should be the burden of any cable operator opposing rate regulation to prove the facts supporting its own defense of effective competition. Third, the legislative history of the '92 Cable Act demonstrates that the incidence of effective competition is

relatively rare. *See, e.g., Sen. R. No. 102-92, p. 8* ("at present there is no significant competition from other multichannel video providers"); *id.*, p. 18 ("the evidence demonstrates that there is no certainty that such competition to cable operators with market power will appear any time soon"). That being so, it is unreasonable to place the burden on franchising authorities to come forward with evidence documenting this state of affairs. Fourth, cable operators have an adequate means of raising the effective competition issue at any time either by filing a petition for change of status with the franchising authority (see discussion in section V.D. below) or by seeking review of the franchising authority's final decision regarding basic service rates.

In conclusion, the Minnesota Cities propose that the finding of effective competition be handled as follows: 1) when an application for certification is received by the Commission staff, it will be checked against Commission data to confirm the absence of effective competition; 2) certification will be granted if Commission records do not disclose the existence of effective competition; and 3) should the cable operator object to the Commission's finding or should the status change, it may seek review of the franchising authority's final decision regarding basic service rates or petition the franchising authority for a change in status.

C. Filing of Franchise Authority Certificate

With the exception of certifying the absence of effective competition for the reasons described in the previous section, the

Minnesota Cities support the form of application proposed in ¶ 19 and Appendix D of the NPRM.

The Commission asks in ¶ 21 of the NPRM whether two or more communities served by the same cable system may file a joint certification and exercise joint regulatory jurisdiction. This approach has already been approved under the Cable Act in that it states applications may be filed by "franchising authorities" rather than "cities." A "franchising authority" is defined as "any governmental entity empowered by Federal, State, or local law to grant a franchise." *47 U.S.C. § 522 (10).* Many cable commissions consisting of two or more political subdivisions, such as the Greater Grand Rapids Area Cable Commission, have been formed pursuant to state-authorized joint powers agreements. There should be no question but that these joint powers agencies have the authority to apply for certification.

D. Approval of Certification by Commission

The Commission correctly concludes in ¶ 23 of the NPRM that the 30-day approval period for franchising authority applications for certification is not an appropriate time for cable operators and other interested parties to comment on the application. The Minnesota Cities agree with the Commission that such applications should be considered based on information submitted by the franchising authority, and that any denial of certification would be subject to the Commission's normal procedures for reconsideration, review and appeal.

The 30-day approval period built into the '92 Cable Act is intended to provide the Commission with adequate time to review the three issues submitted in the application: 1) the consistency of local regulations regarding cable rates with Commission regulations; 2) the legal authority to adopt and personnel to administer the regulations; and 3) the provision of a reasonable opportunity for the consideration of the views of interested parties. The injection of additional issues and consideration of comments by cable operators and other parties will only detract from the Commission's review of the three statutory criteria. Cable operators and other parties who object to the Commission's findings regarding these three criteria may have those objections heard through the filing of a petition for revocation, as discussed below.

E. Revocation of Certification

The Minnesota Cities agree with the Commission's conclusion in ¶ 26 of the NPRM that the '92 Cable Act contemplates less drastic remedies than revocation of certification in certain instances. Indeed, the legislative history provides that:

> The Committee does not intend that the FCC revoke the authority of franchising authorities for any minor variance with the FCC standards, but for inconsistencies that will adversely affect the integrity of the rate regulation process.

Sen. R. No. 102-92, p. 74. Thus, revocation would be appropriate only in those rare instances where state or local laws have been

altered so that they are no longer consistent with Commission regulations.[3]

Other forms of relief which may be employed include temporary suspension of certification for failure to employ adequate personnel to administer rate regulations.[4] In cases where a franchising authority has failed to apply procedural laws and regulations in a manner which provides a reasonable opportunity for the consideration of the views of interested parties, a rate decision could be remanded to the local body for further proceedings which allow for such consideration.

The Commission also solicits comments at ¶ 28 of the NPRM concerning petitions for changes in effective competition status. The Minnesota Cities agree that a cable operator should be required to initially file this petition with the franchising authority, and that an opportunity for public comment should be provided. However, the suggested pleading cycle of seven to ten days for filing of oppositions is inadequate because of the lack of public availability of data which would be required to refute the cable

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[3] The NPRM does not address the issue of when state and local laws would be deemed to be inconsistent with Commission regulations. The Minnesota Cities propose that this issue be addressed in the Commission's final regulations, and that the standard of consistency not be limited to mere duplication of the Commission's regulations. Local bodies should be allowed to incorporate regulatory provisions which will accommodate their unique circumstances without being at risk for having their laws construed as being inconsistent or preempted by the Commission. Instead, traditional constitutional principles should be applied to enable state and local governments to adopt supplemental legislation and rules which are not in conflict with the Commission's regulations. *Askew v. American Waterways Operators*, 411 U.S. 325 (1973).

[4] In the case of such temporary suspensions, the Commission should exercise jurisdiction over basic rates consistent with Section 623 (a)(6).